

**NATIONWIDE PERMITS
REGIONAL CONDITIONS
STATE OF MONTANA
OMAHA DISTRICT – CORPS OF ENGINEERS
Effective March 18, 2002**

1. Fens

All nationwide permits, with the exception of 3, 5, 20, and 32, are revoked for use in fens in Montana. For nationwide permits 3, 5, 20, and 32 permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any regulated activity impacting fens in Montana.

Wetlands commonly known as fens are defined as wetlands that are characterized by waterlogged spongy ground and contain (in all or in part) soils classified as histosols or mineral soils with a histic epipedon. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

2. Springs

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in Montana. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

3. Pool and Riffle Complexes

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into pool and riffle complexes. The notification must contain identification of the location of pool and riffle complexes in the project area. Projects involving the discharge of dredged or fill material into a pool and riffle complex will not be authorized by a nationwide permit unless the permittee demonstrates that avoidance is impracticable. Compensatory mitigation for unavoidable adverse impacts may be required.

4. Yellowstone River, Bitterroot River, and Missouri River

In addition to those nationwide permit activities that require notification to the Corps, all activities proposed to be undertaken on the Yellowstone, Bitterroot and Missouri Rivers in accordance with NWPs 3, 12, 13, 14, 16, 18, 19, 39, 40(b), and 42 require prior notification to the Corps in accordance with General Condition No. 13 (Notification).

5. Nationwide Permit 12 - Utility Line Activities

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into a flowing stream (including intermittent and ephemeral streams) in Montana.

Utility line projects through wetlands must be designed and constructed to prevent the trench and bedding material from acting as a subsurface drain. Cutoff collars will be installed if necessary to prevent wetland drainage.

6. Nationwide Permit 13 - Bank Stabilization

Bank stabilization structures that project into the stream, such as barbs or vanes, must meet the following criteria for consideration under this nationwide permit:

- The end of the structure at the bank will be no higher than the ordinary high water mark.
- The structure must angle upstream.
- The top of the structure must decrease in elevation from the bank to the end of the structure away from the bank.
- The structure must be keyed into the bed and the bank.

Structures that project from the bank, that are perpendicular to the normal flow direction, or angle downstream, or extend above the ordinary high water mark, or are designed horizontally level, will not be considered under Nationwide Permit 13.

Projects that meet the bulleted criteria above may be reviewed under individual permit procedures if the Corps determines the project may have adverse impacts to adjacent properties, river functions, or essential habitat. Structures that occupy more than 10-25% of the bankfull channel width are more likely to be evaluated under individual permit procedures. Any permitted structure that fails must be repaired or all material removed from below ordinary high water.

The following applies to bank revetments (i.e., riprap, rootwads or any bioengineered revetment) and to bank stabilization structures that project into the stream, such as barbs or vanes. All bank stabilization structures must meet the following criteria for consideration under this nationwide permit:

- The top of the bank stabilization structure may not extend above the elevation of the existing top of the bank (i.e., no new levees).
- No bank stabilization structure can block or divert flows from entering a side channel or an overflow channel.

7. Nationwide Permit 23 - Approved Categorical Exclusions

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activities involving the discharge of dredged or fill material into waters of the United States.

8. Nationwide Permit 27 - Stream and Wetland Restoration Activities

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any wetland or riparian restoration or creation activities that involve the discharge of dredged or fill material into waters of the United States.

9. Nationwide Permit 39 - Residential, Commercial, and Institutional Developments

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any work that involves the discharge of dredged or fill material into waters of the United States.

10. Placement and Removal of Temporary Fills

General Condition No. 24 is amended by adding the following: When temporary fills are placed in wetlands, a horizontal marker (e.g., fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction to facilitate removal to original grade and contour and to aid in restoration of impacted vegetation.

11. Channel Straightening and Relocation Activities

For all nationwide permits, except NWP 40(a), permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity that would result in straightening, relocating and/or shortening an existing perennial stream channel. For all such activities, the following conditions must be met:

- (1) The total channel length reduction is less than 100 feet; and
- (2) The project is necessary to prevent significant damage to private or public structures (roads, buildings, bridges, etc.); or
- (3) The project involves relocation of a previously straightened stream channel and net length is not reduced.

In addition to the above, the following conditions must be adhered to:

(a) Buffer strips will be set aside along the entire length of the new channel with a minimum width of 30 feet measured from the top of each side slope. The buffer strip shall be planted to appropriate permanent, perennial, native vegetation and will remain in this condition. Trees/shrubs removed by the construction will be replaced at a minimum ratio of 2 (replanted): 1 (removed). Higher ratios may be required in higher valued resource areas. The trees/shrubs will be replanted within the buffer strip, extending up and downstream of the project area, if necessary.

(b) The side slopes of the channel will be no steeper than three-foot horizontal to one-foot vertical [3(h): 1(v)]. If steeper slopes are proposed, a registered professional engineer must certify their stability. In no case will unarmored slopes steeper than 2(h): 1(v) be acceptable.

(c) Wetland losses greater than 0.1 acre will be mitigated. Replacement of riffle/pool complexes may be required if it is determined that their loss results in more than minimal impact.

